



Paper No. 20

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COPY MAILED**FEB 21 2003****OFFICE OF PETITIONS**

In re Application of
Frederic Goldstein
Application No. 09/340,303
Filed: June 28, 1999
Attorney Docket No. 227076/014

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: DECISION GRANTING PETITION
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This is a decision on the petition under 37 CFR 1.182 filed February 6, 2003, requesting that the above-identified application be accorded a filing date of June 28, 1999, rather than the presently accorded filing date of March 13, 2000.

The above-identified application was deposited on June 28, 1999. A review of the application file and the Office's electronic records of the application reveals that the application deposited on June 28, 1999, included a transmittal letter (one page) entitled "Utility Patent Application Transmittal", Fee Transmittal (one page), a Preliminary Amendment (6 pages), and a Preliminary Drawing Amendment (2 pages) accompanied by 5 sheets of drawings containing Figures 12-16. A review of the transmittal letter reveals that it did not indicate that any pages of specification or drawings were being filed but it did include an incorporation by reference statement which incorporated by reference the entire disclosure of prior application No. 08/902,538. The Preliminary Amendment contained amendments to the specification and claims and included four (4) claims numbered 22-25. No specification was deposited on June 28, 1999.

On July 28, 1999, Initial Patent Examination Division mailed a "Notice to File Missing Parts" stating that the application had been accorded a filing date and requiring an executed oath or declaration in compliance with 37 CFR 1.63 and the \$130.00 surcharge set forth in 37 CFR 1.16(e). Since no specification was submitted with the application papers on filing, the application was erroneously accorded a filing date of June 28, 1999.

On September 28, 1999, an executed declaration and the surcharge were filed.

Thereafter, on February 18, 2000, Initial Patent Examination Division mailed a Notice of Incomplete Application stating that application was not entitled to a filing date because the specification is missing. A complete specification including at least one claim as prescribed by 35

U.S.C. 112 was required.

In response, on March 13, 2000, a specification including claims, 3 sheets of drawings containing Figures 1-11, and a copy of an executed declaration were filed. Accordingly, the application was accorded a filing date of March 13, 2000. The specification and drawings filed March 13, 2000 are a true copy of the specification and drawings as originally filed in prior application No. 08/902,538.

Petitioner states that the transmittal letter filed with the application on June 28, 1999 incorporated by reference the parent application No. 08/902,538 and requests that the application be accorded a filing date of June 28, 1999.

In view of the incorporation by reference contained in the application transmittal letter deposited on June 28, 1999, the Office, on petition, may accept a copy of the prior application at a later date (i.e., the copy of the prior application filed on March 13, 2000) and accord the application a filing date of June 28, 1999, the date a request for a divisional application based on prior application No. 08/902,538 was filed.

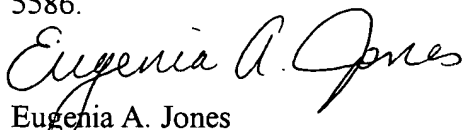
The petition is granted.

Receipt is acknowledged of the preliminary amendment filed February 6, 2003.

After mailing of this decision, the \$130.00 petition fee will be charged to counsel's deposit account No. 06-2000 as authorized in the petition. The petition fee is necessary to correct applicant's filing error.

Thereafter, the application will be returned to Initial Patent Examination Division for further processing including correction of the filing date to **June 28, 1999**, using the copy of the application papers including the specification and the 3 sheets of drawings supplied on March 13, 2000.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 306-5586.



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